

F. M., Hobby, Martin, Moore, Piner, Smith, Stephens, Storey, Thompson—14.

NAYS—Senators Ball, Brown, Crain, Douglass, Edwards, Ford, Grace, Henry J. R., McCormick, McLeary, McCulloch, Terrell—12.

Senator Thompson offered the following amendment:

In Section 2, line 2, add, "after officers of organized fire companies not exceeding five in number."

Adopted.

Amendments of the committee, on motion of Senator McLeary, were adopted.

Senator Brown offered the following amendment:

Amend Section 2 as follows: In line 4, after the word, "inhabitant," insert the words, "all farmers, laborers and mechanics, working with their own hands at their several daily avocations."

Pending which, Senator McCormick moved that the Senate adjourn until 9 o'clock to-morrow morning.

Senator Crain moved to insert, "10," instead of, "9 o'clock," which was carried, and the Senate adjourned until 10 o'clock A. M. to-morrow.

TWENTY-SEVENTH DAY.

SENATE CHAMBER,
AUSTIN, TEXAS, May 19, 1876. }

Senate met pursuant to adjournment. Roll called. Quorum present. Prayer by the Chaplain.

Journal of yesterday read and adopted.

Senator Piner introduced a bill entitled, "An Act to amend an act entitled, 'An Act to amend Article 284 of an act entitled, 'An Act to adopt and establish a penal code for the State of Texas,' approved August 26, 1856. Approved April 23, 1873.

Read and referred to Judiciary Committee No. 2.

Senator Crain introduced a bill entitled, "An Act to amend Article 436, and to repeal Article 440, of an act entitled, 'An Act to adopt and establish a code of criminal procedure,' approved August 26, 1856.

Read and referred to Judiciary Committee No. 2.

Senator Martin offered the following resolution:

Resolved, That Judiciary Committee No. 1 be and are hereby instructed to inquire as to whether an appropriation can legally and constitutionally be made by this Legislature for the purpose of aiding the old veterans of the Texas Revolution of 1836, or to such of them as will actually go to the Centennial Exposition at Philadelphia, and to report the result of their investigations to this body, by bill or otherwise, as soon as practicable.

Adopted.

Senator Storey, Chairman of the Committee on Finance, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Finance have considered Senate Bill No. 159, entitled, "An Act to make an appropriation to pay the salaries of the Judges and other expenses connected with the Court of Appeals, for the fiscal year ending August 31, 1876," and I am instructed to return the same, with the recommendation that it do pass. STOREY, *Chairman*.

Senator Crain introduced the following bill, entitled: "An Act to amend Article — of an act entitled, 'An Act to adopt and establish a code of criminal procedure for the State of Texas,'" approved August 26, 1856.

Read and referred to Judiciary Committee No. 2.

Senator McLeary introduced the following joint resolution, proposing an amendment to Section 56 of Article 16 of the Constitution of the State of Texas:

Be it resolved by the Legislature of the State of Texas, That Section 56 of Article 16 of the Constitution of the State of Texas be so amended as hereafter to read as follows:

"SEC. 56. No part of the public domain of the State shall ever be granted to any railway company for building a railroad in any county wherein a railroad has already been completed, except such companies as have actually commenced work under charters now existing."

Read and referred to Committee on Constitutional Amendments.

Senator Brady introduced a bill entitled, "An Act to amend Section 3 of an act entitled, 'An Act regulating taxation,'" approved June 3, 1873.

Read and referred to Committee on Finance.

The following message was received from His Excellency the Governor, with an accompanying report from the Chief Justice of the Supreme Court:

EXECUTIVE OFFICE, STATE OF TEXAS, }
AUSTIN, May 19, 1876.

Hon. R. B. Hubbard, President of the Senate:

I have the honor to transmit herewith, for the consideration of the Legislature, a report to the Executive from Hon. O. M. Roberts, Chief Justice of the Supreme Court, showing the operations of that tribunal since February 1, 1874, the amount of business transacted, number of cases disposed of, and that remaining undisposed of on the docket now.

The facts stated in this report are commended to the Legislature as of the first importance to be properly understood and appreciated and given full force in the re-organization of the judicial system of the State. It will be perceived from the report that since February 1, 1874, the date of re-organization of the Supreme Court, under the constitutional amendment then just adopted, the number of causes left on the dockets undecided have increased about one hundred annually; the number found at that date on the dockets being four hundred and fifty-seven, and the number on the docket on the fifteenth of this present month, after deducting those over which the Appellate Court has jurisdiction, being seven hundred and seventy-nine. About six weeks' time remains to complete the labors of the Supreme Court for this fiscal year, and assuming that seventy-nine cases will be disposed of, there will remain seven hundred cases undecided. More than half of these cases are stated by the Chief Justice to involve or pertain to the title to land, and are the most difficult cases before the court, many of them having been passed because of the difficulty of arriving at satisfactory conclusions. Taking into consideration the character of the cases, it is believed if five judges were on the bench, instead of three, that to dispose of these seven hundred cases would require two years of hard labor. With only three judges, still more time will be neces-

sary. It is also believed that a diminution of the bench from five judges to three will be an offset to the relief which has been expected from the Court of Appeals, and that the Supreme Court, thus weakened in working force, will hereafter be even further behind than it has heretofore been, since with the increase of population and growth of the country the business of the courts is constantly increasing. Commencing at least two years behind, it is plain to be seen that the Supreme Court will constantly become less adequate to a dispatch of the business of the country, and, unless some remedy is devised, that practically the administration of justice and the law will be suspended as to cases going to that court. The citizen whose rights are withheld must wait two years at least, and most probably three or four, after experiencing the delays of the lower courts, before he can have an adjudication in the court of last resort, will fail to see the efficacy of the thirteenth section of the Bill of Rights, which declares that " * * * all courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law." Many most valuable rights perish and become worthless in two or three years. In such cases, under the existing system, there is an absolute denial of justice.

The report of the Chief Justice shows several classes of cases over which no court in existence under the present Constitution has appellate jurisdiction. Twenty-four cases of this character are now on the docket of the Supreme Court. What is to be done with them, and with others of a like character constantly arising?

The country is expecting of this Legislature such action as will place all the departments of the government in harmonious and efficient operation, and neither of the other two in practical administration so nearly or vitally affects every citizen of the State as does the judicial department.

Believing that the facts so clearly set forth by Chief Justice Roberts should enter into the estimate in your deliberations on the general subject, this report is respectfully submitted. RICHARD COKE.

AUSTIN, TEXAS, May 15, 1876.

To His Excellency, Richard Coke, Governor of the State:

It may be of interest at this time for the other departments of the government to be informed of the condition of the business in the Supreme Court during your administration, and I therefore respectfully submit the following statement. Your obedient servant,

O. M. ROBERTS, *Chief Justice Supreme Court.*

FROM FEBRUARY 1 TO JULY 31, 1876.

Number of cases on docket February 1, 1874.....	457
Number that came in during that session, ending July 31, 1874	417

	874
Number of cases decided that term after February 1, 1874.....	352

Which left undisposed of July 31, 1874.....	522
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FROM THE FIRST MONDAY OF OCTOBER, 1874, TO THE LAST DAY OF JUNE, 1875.

Number of cases left undecided at previous term.....	522
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Increase in the number at Tyler, Galveston and Austin, to June 30, 1875.....	906
	<hr/> 1428
Number of cases disposed of at the three places, from first Monday in October, 1874, to June 30, 1875.....	744
	<hr/> 684
Number of cases left undisposed of.....	684
FROM THE FIRST MONDAY IN OCTOBER, 1875, TO THE PRESENT, TO-WIT: MAY 15, 1876, AT THE ORGANIZATION OF THE APPELLATE COURT.	
Number of cases at end of previous terms at all three places.....	684
Number of increase during that time (one assignment not yet come in).....	788
	<hr/> 1472
Number of cases disposed of in said time.....	415
	<hr/> 1057
These 1057 cases will be distributed as follows, to-wit:	
TURNED OVER TO THE APPELLATE COURT.	
Criminal cases at Austin.....	138
Criminal cases at Tyler.....	7
	<hr/> 145
Of these twenty or thirty are escaped.	
Civil cases at Austin.....	70
At the same ratio at Tyler and Galveston we may suppose.....	40
	<hr/> 255
Whole number turned over to Appellate Court.....	
WITHOUT JURISDICTION NOW IN ANY COURT.	
At Austin.....	15
At the same ratio at Tyler and Galveston.....	9
	<hr/> 24
SUPREME COURT.	
Civil cases within the present jurisdiction of the Supreme Court at three places; more than half of which are suits for or relating to land.....	779

EXPLANATION.

The foregoing distribution of cases has been and will continue to be made under the following rules, founded upon our construction of the present Constitution, which is that the cases must be distributed to each court according to its present jurisdiction, just as if the several courts, Supreme Court, Court of Appeals, the District Court, the County Court and the Justice's Court, as provided for in the Constitution, had all been in operation previous to April 18, 1876, when the 1074 cases now in the Supreme Court were brought into it by appeals or writs of error. (See Sec. 8, of judicial department of the Constitution of 1876.)

Therefore, the Supreme Court retains suits for land, for divorce, etc., and where the amount in controversy is five hundred dollars and over, exclusive of interest, which gives it about 779 cases,

The Court of Appeals will have transferred to it suits wherein the amount in controversy is less than \$500, exclusive of interest, and over \$200; and also suits for less than \$200, wherein a judgment has been rendered for more than \$100 (see Sections 6 and 16), and all criminal cases, which gives the Court of Appeals about 255 cases.

And there are three criminal cases that have been returned into this Court since April 18, 1876, not filed, that will go to the Court of Appeals.

First—No appellate jurisdiction has been provided in the Constitution for cases wherein the suits are for less than \$200, and the judgments therein less than \$100. (See Sections 16 and 6 of the judiciary department of the Constitution of 1876.) Of such suits there are about twenty-four cases now on the docket at the three places.

Second—Proceedings by writ of *habeas corpus*, by a parent to recover a child, are only provided for in the present Constitution, as an original and not an appellate proceeding in the Court of Appeals. (See Sections 3, 6, 8 and 16, of the judicial department of the Constitution.) Therefore, such a suit now pending in the Supreme Court on appeal, is left without jurisdiction in any court, there being no amount of damages claimed, or in controversy in the suit.

WRITTEN OPINIONS BY THE COURT.

There were delivered by the five judges on the bench, written opinions as follows, in deciding 1576 cases in two years and three and a half months:

From the first of February, 1874, to the last of July, at Austin	214
From the first Monday in October, 1874, to the last day of June, 1875, at three places.....	443
From first Monday in October, 1875, to May 15, 1876, at three places.....	285
	<hr/> 942

These opinions have been enough to make two good volumes of reports annually.

The law does not require written opinions where cases are affirmed, and, therefore, many such cases that required labored examinations were affirmed without written opinions.

Nor does it require written opinions on motions. They have been numerous, and seem to be increasing, most of which have been decided without written opinions.

The law required criminal cases to be decided without reference to the date of filing, and hence a large portion of the 1576 cases that were decided, were criminal cases, and cases with little difficulty, which caused the most difficult cases, with some exceptions, to be left undecided, which now make up the 779 civil cases now on the Supreme Court docket undecided, some of which have been on the docket for four years. Respectfully,

O. M. ROBERTS,

Chief Justice of Supreme Court.

The message of the Governor and accompanying documents read.

On motion of Senator McLeary, 500 copies of the message and report of Chief Justice were ordered printed.

Senator Smith moved to refer the message and report jointly to Judiciary Committees No. 1 and 2.

Senator Terrell moved to amend the motion of Senator Smith by striking out Judiciary Committees Nos. 1 and 2, and inserting Committee on Constitutional Amendments.

Amendment adopted, and the message and report referred to the Committee on Constitutional Amendments.

On motion of Senator Brady, concurrent resolution "requiring the appointment of two Senators and three Representatives to visit the State Agricultural and Mechanical College at Bryan, and report the result of their observations," was taken up, and the word, "concurrent," in the resolution, and all that refers to the "House concurring," etc., were stricken out and the resolution thereby changed to a simple resolution, and adopted.

Senators Carroll and Smith were appointed by the President on said committee.

On motion of Senator McLeary, the rules were suspended, and the following House Bills were taken up and referred to the appropriate committees, viz:

House Bill No. 83—"An Act making an appropriation to pay Capt. L. H. McNelly's company of volunteer militia for sixteen months' services on the Rio Grande, to July 1, 1876."

Referred to Committee on Frontier Defense.

House Bill No. 126—"An Act to provide for the transfer of cases in the late Criminal Courts of the State to the District Courts, and to legalize the proceedings of the District Courts in certain cases."

Referred to Judiciary Committee No. 1.

House Bill No. 120—"An Act to fix the amount of jury fees in the District, County and Justices' Courts."

Referred to Judiciary Committee No. 2.

House Bill No. 99—"An Act to regulate the fees to be charged by the Commissioner of the General Land Office."

Referred to the Committee on the General Land Office.

On motion of Senator Smith, the resolution "allowing the committee on Constitutional Amendments to have joint resolutions referred them, printed," was taken up and adopted.

Senator Hobby, Chairman of Judiciary Committee No. 1, by leave, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate Bill No. 119, entitled, "An Act to regulate proceedings in the County Courts pertaining to the estates of deceased persons," have had the same under consideration, and have instructed me to report the bill back to the Senate with the accompanying substitute, and recommend the adoption of the substitute, and its passage.

The caption of the substitute to the said bill is as follows: "An Act to regulate proceedings in the County Court pertaining to the estates of deceased persons."

The bill was read, and on motion of Senator Hobby, two hundred copies of substitute were ordered printed.

A message was received from the House announcing the passage by that body, of Senate Bill No. 36, "An Act to provide for the manner in

which publication of notice of intention to apply for the passage of a local or special law, and proof of such publication shall be made," with amendments.

Hobby, *Chairman*.

The President announced that Senator Brady was added to Committee on Constitutional Amendments.

Senate Bill No. 109, entitled, "An Act to regulate juries in civil cases," being the unfinished business of yesterday, was taken up.

Pending on adjournment, was Senator Brown's amendment, which was as follows: Amend Section 2 as follows: Insert in line 4, after the word, "inhabitants," the words, "all farmers, laborers and mechanics, working with their own hands at their several daily avocations."

Senator Thompson offered the following substitute for Senator Brown's amendment:

Amend Section 2 so as to read: "Section 2. No person qualified under this act shall be exempt from jury service; but the Judge may excuse any person for good cause, made known to him in open court, when said person is called to act as a juror."

The substitute rejected and the amendment lost.

Senator Crain offered the following amendment:

In Section 2, line 4, after, "inhabitants," insert, "*provided*, that the officers to be exempted shall be selected by the company, and their names handed to the Clerk of the District Court by the foreman of the company before the exemption can be taken advantage of."

Adopted.

President *pro tempore* in the chair.

Senator McCormick offered the following amendment to Section 1:

Strike out the words, "and able to read and write," in the last line of the section.

The President in the chair.

Senator Ford offered the following substitute for Senator McCormick's amendment:

To Section 1 add the following proviso: "*Provided*, that whenever the Jury Commissioners, hereinafter provided for, cannot find the proper number of jurors able to read and write, then the qualifications of an ability to read and write may be dispensed with."

Pending which, on motion of Senator Smith, the Senate adjourned until to-morrow at 10 o'clock A. M.

TWENTY-EIGHTH DAY.

SENATE CHAMBER,
AUSTIN, TEXAS, May 20, 1876. }

Senate met pursuant to adjournment. Roll called. Quorum present. Prayer by the Chaplain.

Journal of yesterday read and adopted.

Senator Carroll moved that one more Senator be added to the Committee appointed to visit the Agricultural and Mechanical College at Bryan.

Carried, and Senator Brady was appointed by the President, on said committee.

The following communication was received from the Secretary of State: